

For the rejection to stand, claims 1-3 must be identical to those in the '224 patent. [M.P.E.P. 804; 804.02] In claim 1(h), the '224 patent specifies that the peelable heat seal is located "outwardly" of the permanent heat seal. In the present application, the peelable heat seal is located "at a radius not less than that of the permanent heat seal" (emphasis added). Thus, the claims are of a different scope and one could be literally infringed without infringing the other. Furthermore, claim 1(h) of the present application contains the additional limitation that the permanent and peelable heat seals provide "barriers to migration of components of the active agent formulation from the reservoir into the adhesive layer." The '224 patent contains no such limitation. The difference in limitations in claims 1-3 of the present application means that claims 1-3 of the present application are not identical to those of the '224 patent. Thus, withdrawal of the double patenting rejection is respectfully requested.

Obviousness-Type Double Patenting Rejection

Claims 4-6 were rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 4,849,224. Applicants are submitting herewith a terminal disclaimer in compliance with 37 CFR 1.321(b). Withdrawal of the obviousness-type double patenting rejection is respectfully requested.

Respectfully submitted,
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